



GENERAL SESSION

HAZARDOUS WASTE MANAGEMENT COMMISSION

September 30, 2004

9:00 A.M.

Kansas City Regional Office

500 N.E. Colbern Road

Lee's Summit, Missouri 64086-4710

Phone (816) 633-7000

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COMMISSIONERS PRESENT

Ben Kessler, Chairman
Patrick Gleason, Vice-Chairman
Norella Huggins
Robert Saunders
Tim Warren
Rusty Brown

STAFF PRESENT

Ed Galbraith, Staff Director
Robbin Stout, Secretary to Commission
Shelley Woods, Counsel to the Commission

CALL TO ORDER

Chairman Kessler called the meeting to order at 9:00 a.m.

EXECUTIVE SESSION

Motion to go into closed session was made by Commissioner Warren and seconded by Commissioner Gleason.

Commissioner Huggins called for a discussion stating that the items to be discussed in closed session were "inappropriate" for closed session and should be discussed in open session. Shelley Woods, Assistant Attorney General's Office (AGO,) read from 610.021(1) RSMo, stating that, "a public governmental body is authorized to close meetings etc. to the extent that relate to the following: legal actions, causative actions or litigation involving a public governmental body and any confidential or privileged communications between a public governmental body or its representatives and its attorneys." There was a brief discussion.

The result of the vote is as follows:

Ben Kessler, Chairman	yes
Patrick Gleason, Vice-Chairman	yes
Norella Huggins	no
Robert Saunders	yes
Tim Warren	yes
Rusty Brown	yes

Motion carried and the meeting was closed to the public.

Motion to take a nine-minute break and return to Open Session at 9:30 a.m. was made by Commissioner Gleason and seconded by Commissioner Huggins.

The result of the vote is as follows:

Ben Kessler, Chairman	yes
Patrick Gleason, Vice-Chairman	yes
Norella Huggins	yes
Robert Saunders	yes
Tim Warren	yes
Rusty Brown	yes

Motion was carried, a nine-minute break was taken and the General Session was resumed at 9:30 a.m.

APPROVAL OF MINUTES

Closed Session Minutes: Motion to approve the closed session minutes of the August 5, 2004, meeting as presented was made by Commissioner Gleason and seconded by Commissioner Saunders

Motion was carried and the minutes were approved.

Open Session Minutes: Motion to approve the open session minutes of the August 5, 2004, meeting as presented was made by Commissioner Gleason and seconded by Commissioner Saunders.

Commissioner Huggins pointed out that on page 10 of the Open Session Minutes, in the last sentence under the SUMMARY OF THE TRULY AGREED VERSION OF BILL SS#2 HCS HB 980, the word “proof” should be changed to “approve” and the word “for” to be added so that it reads “...they will *approve* the Revised Regulatory Impact Report and the Procedural Rules *for* Commission Hearings.”

Motion to approve the corrected Open Session Minutes of the August 5, 2004, meeting was made by Commissioner Gleason and seconded by Commissioner Saunders.

Motion carried and the corrected minutes were approved.

CITY OF SULLIVAN APPEAL DISMISSAL

Shelley Woods, AGO, informed the Commission that the city of Sullivan sent a letter asking that their appeal be dismissed.

Motion to dismiss the city of Sullivan’s appeal was made by Commissioner Gleason and seconded by Commissioner Warren.

The result of the vote is as follows:

Ben Kessler, Chairman	yes
Patrick Gleason, Vice-Chairman	yes
Norella Huggins	yes
Robert Saunders	yes
Tim Warren	yes
Rusty Brown	yes

Motion carried and the city of Sullivan's appeal was dismissed.

GM LEEDS, REAPPOINTMENT OF A NEW HEARING OFFICER FOR REGISTRY APPEAL

Carey Bridges, Superfund, presented a brief history and update of the GM Leeds site, explaining the reason that a new hearing officer needs to be appointed to the GM Leeds site. Ms. Bridges and Ed Galbraith, Director, Hazardous Waste Program (HWP), answered questions the Commission had regarding the site.

Lindsay Woods, Swanson, Midgley, LLC representing Leeds Industrial Park informed the Commission that GM and Leeds Industrial Park had agreed in principle to a reservation between the two. He informed the Commission that though he could not speak for GM, according to a GM representative, GM would consent to the placement of the property on the registry. Commissioner Warren asked if there was a representative present from GM and there was not.

Motion was made by Commissioner Gleason to appoint the Administrative Hearing Commission or in the alternative, a hearing officer under contract with the Missouri Department of Natural Resources, as the new hearing officer to resolve the GM Leeds Registry Appeal and seconded by Commissioner Huggins.

Motion carried and the Administrative Hearing Commission or in the alternative, a hearing officer under contract with the Missouri Department of Natural Resources will be appointed if necessary as the new hearing officer to resolve the GM Leed Registry Appeal.

REFERRALS TO THE AGO

Heather Markwell, Enforcement Section, briefed the Commission and answered questions regarding the program's request to refer six sites to the AGO in order to compel compliance and pursue and negotiate a civil penalty. The sites are: Golden City Fastrip, Golden City, Missouri; Stop & Shop, King City, Missouri; Jewell's Service 2601, Kansas City, Missouri; Expressways Food Shop #1, Warrensburg, Missouri; Expressways Food Shop #2, Warrensburg, Missouri; and K's Kwik Center, St. Clair Missouri.

Motion was made by Commissioner Huggins to refer Golden City Fastrip, Stop & Shop, Jewell's Service, Expressways Food Shop #1, Expressways Food Shop #2, and K's Kwik Center be referred to the AGO in order to compel compliance and pursue and negotiate a civil penalty and seconded by Commissioner Warren.

Motion carried.

MIDWEST OIL REFINING VARIANCE REQUEST

Kathy Flippin, Enforcement Section Chief, briefed the Commission and answered questions regarding the status of the Midwest Oil Refining Variance requesting that a telephone conference call to vote on the variance be scheduled. It was noted that Midwest Oil Refining had a thousand percent increase due to the fee. Questions arose regarding the possibility of an ongoing financial burden of the hazardous waste fee on Midwest Oil Refining and the uniqueness of Midwest Oil Refining in comparison to other small businesses, regarding payment of the fee. Ed Galbraith, Director, HWP, explained to the Commission the difficulties regarding Midwest Oil Refining's specific situation in granting a second year waiver of the fee, considering the company's difficulty with past payments of the fee. He pointed out that variances are considered to be yearly and not ongoing. Mr. Galbraith assured the Commission that the problem of the fee's financial burden on small businesses is being brought to the legislator's attention in the context of the HWP's Interim Committee for resolution.

Commissioner Brown said that secondary fuel sources in the United States are at an all time high. Commissioner Brown pointed out record profits being made from secondary fuel sources saying that two years ago his company paid 98 cents a gallon to have fuel hauled away, last year it went to zero and this year his company is being paid 14 cents a gallon to have it hauled away. He further pointed out that these secondary fuel sources are presently selling at over a dollar a gallon.

The Commission decided to delay any action on the Midwest Oil Refining Variance request and place this item on the December 15, 2004, Commission Meeting Agenda along with an invitation to Midwest Oil Refining to attend, offering them the opportunity to present their position before the Commission.

DAIMLER CHRYSLER CORPORATION

Kathy Flippin, Compliance/Enforcement Section Chief, presented the department's recommendation to the Commission to approve a variance request received from Daimler Chrysler Corporation's St. Louis Assembly Plant Complex - North Plant in Fenton, Missouri. She indicated that after the public comment of 30 days, and if no request for a hearing is received, the Commission will be asked to vote on the variance request. DaimlerChrysler is requesting a variance from compliance with 40 CFR Part 265 Subpart BB as it is incorporated in Missouri's hazardous waste regulations. Ms. Flippin explained that on April 26, 2004, the U.S. Environmental Protection Agency (EPA) published a regulation that allows manufacturers of light trucks and automobiles to comply with new Clean Air Act requirements instead of the hazardous waste tank vapor emissions requirements of Subpart BB. However, Missouri has not yet adopted the regulation, but intends to do so. Because the rule adoption process takes some time to accomplish, DaimlerChrysler would be in violation of Missouri's regulations unless the variance is granted. Additionally, DaimlerChrysler is requesting the variance to facilitate its compliance with the terms of a September 26, 2002, Consent Agreement and Final Order with the EPA. Ms. Flippin explained that EPA's "National Emission Standards for Hazardous Air Pollutants" rule of April 26, 2004 indicated that the hazardous air pollutant emissions from captured purged materials were very small in relation to those released from the general paint application process. Also, the department's Air Pollution Control Program has evaluated the company's request and potential impacts of the variance and agrees the environmental impact of granting the variance would be negligible.

Based on this information, Ms. Flippin recommended that the Commission approve the variance request and urge DaimlerChrysler Corporation to enter into discussions with the HWP within 90 days of the issuance of the variance to propose a project that might offset the institutional impacts of granting the variance on the department's regulatory program. Ed Galbraith, explained some of the type of projects that DaimlerChrysler may undertake to demonstrate positive actions that may relate to community health.

Jon Faletto, an attorney with Howard and Howard, representing DaimlerChrysler Corporation, addressed the Commission to explain the company's processing in relation to the Subpart BB requirements and answered questions from the Commissioners.

The Commission decided on October 29, 2004, for a telephone conference call to vote on the variance request.

FINAL VERSION OF POLICY DOCUMENT

Tim Eiken, Rules Coordinator, HWP, answered questions and pointed out each individual change the Commission had made in the August 5, 2004, Hazardous Waste Management Commission (HWMC), meeting to the Final Version of Policy document.

MEMORANDUM OF UNDERSTANDING (MOU) WITH THE ADMINISTRATIVE HEARING COMMISSION (AHC)

Ed Galbraith, Director, HWP, answered questions and updated the Commission on the status of the MOU with the AHC regarding its workload and the necessity to assign hearing officers instead of referring cases to the AHC at this time.

UPDATE ON THE DRYCLEANING ENVIRONMENTAL RESPONSE TRUST (DERT) FUND AND ACTIONS FROM THE JOINT COMMITTEE ON ADMINISTRATIVE RULES (JCAR) HEARING

Ken Koon, Brownfields/Voluntary Cleanup Section, DERT Unit Chief, updated the Commission on the status of the September 16, 2004, JCAR hearing and the two motions made by JCAR. The first motion to "disapprove the Order of Rulemaking" was adopted on the basis that the department did not have the Order of Rulemaking in place by the statutory deadline of July 1, 2002, (Section 260.905, RSMo). The second motion to "send a letter to the General Assembly to recommend that the effective dates of the statute be amended to allow new authority to pass rules" was also adopted.

Mr. Koon further explained the status of the Order of rulemaking and other issues regarding the DERT Fund, including, the continued collections of surcharges, the direct costs of program and database development, the continuation of the pilot projects, and reconvening the stakeholder rule work group to discuss the DERT Fund.

Mr. Koon answered questions from the Commission regarding the rules. Commissioner Huggins gave testimony at the JCAR Hearing and commented on the procedures and outcome of the hearing. The Commission requested a copy of the minutes of the JCAR Hearing. The minutes are being obtained from JCAR and will be forwarded on to the commission.

JASPER COUNTY LEAD SITE UPDATE

Carey Bridges, Superfund Section, answered questions and briefed the Commission on the Jasper County Lead Site. Ed Galbraith, Director, HWP, pointed out to the Commission that the treatment method being used at the Jasper County Lead Site was developed by Dave Mosby, Superfund Section, has cut costs and been accepted as a suitable treatment by the EPA. Mr. Galbraith also pointed out that the cleanup is contingent upon continued income to the state through HWP fees. Handouts of the presentation are attached to these minutes.

RISK BASED CORRECTIVE ACTION (RBCA) UPDATE

Ed Galbraith, Director, HWP, updated the Commission on the status of the RBCA and answered any questions the Commission had regarding the RBCA. Mr. Galbraith pointed out that a draft RBCA Guidance was scheduled for November 1, 2004, and Implementation and Training is scheduled for sometime near the end of May 2005. He told the Commission that it was the HWP's goal to have a draft rule for the HWMC to review by December 2004 or January 2005. Mr. Galbraith informed the Commission that work is being done on the Tanks RBCA rules and that there would be an update on the TANK RBCA rules at the December 15, 2004, HWMC meeting.

MONTHLY REPORTS

Ed Galbraith, Director, HWP, answered questions regarding the HWP Monthly Reports commenting on progress being made in the various sections within the HWP.

PUBLIC INQUIRIES OR ISSUES

There were no public inquiries or issues signed up for at this time.

OTHER BUSINESS

Ed Galbraith, Director, HWP, acknowledged Commissioner Brown's participation and placement in the Environmental Excellence Awards Program from Region VII. The Environmental Protection Agency presented Commissioner Brown and his facility, Ball Metal Beverage Container Corporation, KCP, a plaque in recognition of their successful pollution prevention activities.

Mr. Galbraith presented an article in lead cleanup in the Big Rivers area where progress is being made. He also updated the Commission on the September 2004 National Brownsfields Conference in St. Louis, pointing out that Missouri is the only state to host two Brownsfields Conferences. (The other conference being held in Kansas City). He also gave a brief update on the Hazardous Waste Interim Committee and related hearings to follow sometime in November and presented a brief explanation for the MOU between the Water Pollution Control Program

and the HWP that will reduce work and permits needed at some clean up sites involving groundwater.

FUTURE MEETINGS

HWMC meeting dates for the year 2005 were discussed including the possibility of a joint meeting with the Petroleum Storage Insurance Fund and the HWMC. It was decided that the Commissioners would be contacted via email to see what dates they would be available and a list of dates would be presented at the December 15, 2004, meeting.

ADJOURNMENT

Motion to adjourn the meeting was made by Commissioner Gleason and seconded by Commissioner Huggins.

Motion was carried and the meeting was adjourned.

Respectfully Submitted,

Robbin Stout
Commission Secretary

APPROVED

Ben Kessler, Chairman

Date: _____